

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Tadashi MATOBA et al.
Title: FUEL CELL SYSTEM AND RELATED METHOD
Appl. No.: 10/508,448
International Filing Date: 10/23/2003
371(c) Date: 9/20/2004
Patent No.: 7,425,380
Grant Date: 09/16/2008
Examiner: Angela J MARTIN
Art Unit: 1745
Confirmation Number: 6714

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 09/16/2008 as U.S. Patent No. 7,425,380.

The Patent Office determined that the patent was entitled to 648 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C.

§ 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 998 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

| | |
|---|-----------|
| (a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): | 1031 days |
| (b) Total Applicant delay: | 33 days |
| Final PTA Determination: | 998 days |

Applicants therefore respectfully request that the patent be accorded 998 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 11, 2008

By 

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Patent Term Adjustment Calculation System

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Docket Number: 040302-0409

Application Number: 10/508448

Patent Number: 7425380

| | Event Description | Event Date | Days from Filing | PTO Days | Applicant Days |
|-------------|---|------------|------------------|------------|----------------|
| Edit Delete | Application Filing Date | 09/20/2004 | 0 | | |
| | 14 month From Application date | 11/20/2005 | 426 | | |
| | 3 Year Period Starts | 09/20/2007 | 1,095 | | |
| Edit Delete | Non-Final Office Action | 10/02/2007 | 1,107 | (681) | |
| | Non-Final Office Action + 3 months | 01/02/2008 | 1,199 | | |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO | 02/04/2008 | 1,232 | | 33 |
| Edit Delete | Notice of Allowance | 05/15/2008 | 1,333 | | |
| Edit Delete | Issue Fee Paid | 08/12/2008 | 1,422 | | |
| Edit Delete | Patent Grant Date | 09/16/2008 | 1,457 | (362) 1031 | |
| | | | Totals: | 1,031 | 33 |
| | | | PTA: | 998 | |

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Version: 3.01.14

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IP: 10.14.53.104

Foley & Lardner LLP